

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	
Annual formula rate update and	:	Docket No. 12-0321
revenue requirement reconciliation	:	
authorized by Section 16-108.5 of the	:	
Public Utilities Act.	:	

REPLY BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION

JESSICA L. CARDONI
JOHN C. FEELEY
MEGAN C. MCNEILL
JOHN L. SAGONE
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jcardoni@icc.illinois.gov
jfeeley@icc.illinois.gov
mmcneill@icc.illinois.gov
jsagone@icc.illinois.gov

December 3, 2012

*Counsel for the Staff of the
Illinois Commerce Commission*

Table of Contents

	<u>Page</u>
I. BACKGROUND	1
II. ARGUMENT	2
A. Staff's Response to ComEd	2
1. Cash Working Capital [III., C., 1]	2
2. Billing Determinants [IV., C., 1.]	3
3. Charitable Contributions [V., C., 1., a]	6
4. Rate Case Expense – Instant Docket (for preparation of an Article IX Rate Case [V., C., 1., b.]	8
5. Rate Case Expense - Docket No. 11-0721 [V., C., 1., c.]	11
6. Identification of cost incurred in compliance with Section 16-108.5 [VIII., C., 3., a]	13
7. Contribution to energy low-income and support programs [VIII., C., 3., b.] 13	
8. Findings and Ordering Paragraphs [X.]	14
9. Terminology Regarding the 2013 Rate Year Revenue Requirement, Which is Based on 2011 Costs and 2012 Projected Plant Additions	17
B. Staff's Response to AG/AARP	18
1. Charitable Contributions [V., C., 1., a.]	18
C. Staff's Response to AG/AARP and CUB	19
1. Accumulated Deferred Income Taxes [III., C., 2.]	19
III. CONCLUSION	19

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company	:	
	:	
Annual formula rate update and	:	Docket No. 12-0321
revenue requirement reconciliation	:	
authorized by Section 16-108.5 of the	:	
Public Utilities Act.	:	

**REPLY BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Section 200.830 of the Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief on Exceptions in the above-captioned matter.

I. BACKGROUND

On November 15, 2012 a Proposed Order was issued by the Administrative Law Judges (“ALJs”) (“ALJPO” or ALJ Proposed Order”). The ALJPO was issued following the conclusion of the evidentiary hearing held on September 25, 2012 and the filing of initial and reply briefs by Staff, Commonwealth Edison Company (“ComEd”), the People of the State of Illinois (“AG”) and AARP (“AG/AARP”), and the Citizens Utility Board (“CUB”).

On November 29, 2012, ComEd, Staff, AG/AARP, and CUB filed briefs on exceptions (“BOEs”) to the ALJPO. The ALJs set December 3, 2012 as the date for the

filing of reply exceptions. The lack of a reply by Staff to a particular exception filed by a party or parties should not be construed to mean that Staff agrees with the exception. In those instances where no reply is provided in the RBOE, Staff stands by the positions taken in its prior filings in this docket. Staff's Reply Brief on Exceptions ("RBOE") follows.

II. ARGUMENT

A. Staff's Response to ComEd

1. Cash Working Capital [Ill., C., 1]

ComEd makes three points in support of its technical Exception No. 2, which concerns cash working capital ("CWC"). ComEd's first and second points take issue with the ALJPO that the \$36,000 difference between Staff and the Company on the issue of CWC is unexplained and not contested. ComEd explains that the \$36,000 difference is due to the fact that Staff's proposed revenue requirement is slightly different than the Company's and, since CWC is as Staff describes in its BOE a derivative adjustment (Staff BOE, p. 5), there is an explained slight difference between Staff's CWC and the Company's CWC. (ComEd BOE, p. 23) Accordingly, ComEd recommends that the word "unexplained" be removed. (Id.) Staff agrees the word "unexplained" should be deleted and recommended that deletion along with other proposed modifications to the ALJPO in its BOE. (Staff BOE, pp. 5-6)

ComEd's third point is its claim that the last five paragraphs of the Analysis and Conclusion section on pages 9-10 of the ALJPO are legally erroneous and should either be corrected or be removed as moot (for two independent reasons). (ComEd BOE, p. 24) Staff agrees that the underlying point at issue is moot. The Commission's order in

Docket No. 12-0001, sets forth language describing a long-standing practice with respect to the issue of current and deferred taxes in computing CWC. That order certainly can be cited to by ComEd in its brief and, therefore, ComEd need not rely upon a Staff witness's statement of what he believes is a long-standing Commission practice in order to make the statement in its brief. However, Staff does not agree with ComEd's claim that the ALJPO's analysis and conclusion on the admission or non-admission of portions of Company witness Hengtgen's testimony (quoting a Staff witness's testimony from another Commission docket) into evidence was in error. Staff agrees with the ALJPO that it would be in error to admit one Staff witness's testimony from a different docket as an admission against another Staff witness as Staff witnesses who testify as independent experts can have differing opinions. (ALJPO, p. 10) For that reason, the Commission should reject ComEd's technical correction deleting the last five paragraphs of the Analysis and Conclusions section of III., C., 1.

In conclusion, since Staff's proposed modification (Staff BOE, pp. 5-6) to the ALJPO clarifies the point that the \$36,000 difference in CWC proposed by ComEd and Staff is not an unexplained and uncontested issue and the ALJPO's analysis on the admissibility of Company witness Hengtgen's testimony into evidence was not in error, the Commission should adopt Staff's proposed modification and reject the Company's Technical correction No. 2.

2. Billing Determinants [IV., C., 1.]

The issue is whether the Commission should modify the historical weather-normalized billing determinants to more accurately reflect customer growth

corresponding to the estimated 2012 plant additions to serve new business. The Company argues that the ALJPO errs on this issue. (ComEd BOE, p. 3)

Because ComEd's plant additions forecast for 2012 includes distribution facilities that are built to accommodate new business, Staff agrees with the conclusion reached in the ALJPO to include the customer growth corresponding to those 2012 plant additions. By adjusting billing determinants to spread the revenue requirement out among those anticipated new customers that will be served by the new plant that has been included in rate base, this will provide for such customer growth. (ALJPO, p. 27)

The Commission already addressed this issue in Docket No. 11-0721 and should reach the same conclusion in this proceeding. There the AG/AARP proposed the same billing determinant adjustment that CUB and AG/AARP are proposing here. (Staff Ex. 11.0, p. 3) In that case, AG/AARP pointed out that if the billing determinants do not match the number of customers that are actually served by plant additions, the revenue requirement will be collected from too few customers, resulting in the rate per customer being higher than it should be. (Order, Docket No. 11-0721, May 29, 2012, pp. 73-74) Consequently, in its Order in Docket No. 11-0721, the Commission concluded that the adjustment to billing determinants was appropriate. (*Id.*, p. 75) Specifically, the Commission noted that "[t]he AG/AARP proposal is reasonable" and directed ComEd to "adjust its billing determinants accordingly." (*Id.*, p. 76; Staff Ex. 11, pp. 3-4; Staff IB, p. 12)

In this case, an analogous situation arises where ComEd included its 2012 forecasted plant additions in the requested rate base as required by Section 16-108.5(c)(6) of the Act. (Staff Ex. 11.0, p. 5) Specifically, the Commission should reflect

a similar adjustment to billing determinants for 2012 customer growth served by 2012 New Business (or new facilities) that are built to accommodate 2012 customer growth. (*Id.*) Consequently, with respect to adjustments to billing determinants, as discussed in ComEd Ex. 13.0, p. 26, the average number of residential customers in 2011 increased by 0.29% over the average number of residential customers in 2010, and the average number of small commercial and industrial customers in 2011 increased by 0.39% over the average number of small commercial and industrial customers in 2010. (*Id.*, p. 6) These increases, based on the 2011 over 2010 increases, would appear to be reasonable estimates of the growth rates that can be expected from 2011 to 2012. (*Id.*) In designing the rates to produce the approved revenue requirement, Staff recommends that the billing determinants used to set rates reflect these increases in order to reflect estimated annual growth in the number of customers in those classes and to be consistent with the inclusion of 2012 New Business plant additions in rate base. (*Id.*; Staff IB, pp. 13-14)

ComEd makes an alternative argument that, should the Commission make an adjustment to the billing determinants, any such adjustment should account for all changes in both usage and the number of customers rather than just include the new customers corresponding to the plant additions for those new customers. (ComEd BOE at 5) ComEd's argument should be rejected. ComEd's argument fails to consider that the adjustment the Commission accepted in Docket No. 11-0721 and which is proposed again in this case is not intended to be a comprehensive restatement of the billing determinants. Instead it is designed to more accurately include new customers along with the plant additions built to serve those new customers.

ComEd made this same argument in Docket No. 11-0721 in the face of similar facts. The Commission rejected ComEd's argument in Docket No. 11-0721 and it should reject that same argument ComEd has recycled here. The Commission stated:

Additionally, a decline in kwh sales, in and of itself, does not establish that there are less customers. It simply means that less electricity was sold. Other factors, such as energy efficiency, a bad economy, etc. may very well contribute to a decline in kwh sales. Without information as to what causes a decline in kwh sales, it does not appear that this decline should offset the increase in billing determinants that reflects ComEd's new business. ComEd, in short, has not presented valid reasons for rejecting the AG/AARP proposal. The AG/AARP proposal is reasonable and it is approved. ComEd shall adjust its billing determinants accordingly. (Docket No 11-0721, Order, May 29, 2012, pp. 75-76)

In conclusion, the Commission should reject ComEd's arguments and follow its Order in Docket No. 11-0721. The Commission should apply the same methodology utilizing ComEd's numbers to ensure that the billing determinants are based on accurate information and therefore result in prudent and reasonable rates. (Order, Docket No. 11-0721, May 29, 2012, pp. 75-76)

3. Charitable Contributions [V., C., 1., a]

ComEd argues that the ALJPO improperly disallows \$306,000 in donations to institutions outside of ComEd's service territory because: (1) nothing in Section 9-227 supports such a disallowance; and (2) discriminating against out of state organizations violates the dormant Commerce Clause. (ComEd BOE, pp. 6-7) The Commission should reject both of these contentions.

First, Section 9-227 states in part that a public utility may recover from rates its donations to charitable contributions made for the public welfare or for charitable

scientific, religious or educational purposes, *provided such donations are reasonable in amount.* (220 ILCS 5/9-227)(emphasis added) Certainly, the language requiring donations to be reasonable in amount allows the Commission to determine what donations are reasonable. As the ALJPO correctly states, the Commission has repeatedly found that out of service territory donations are not reasonable and do not benefit the public. (ALJPO, p. 43, citing Docket Nos. 11-0721, 10-0467 and 12-0001) The ALJPO also states that the Company must show that its out of service territory donation benefits its own ratepaying public, which it did not. (*Id.*) ComEd claims that such a requirement is forbidden by 9-227, presumably due to the language which states “[t]he Commission shall be prohibited from disallowing by rule, as an operating expense, any portion of a reasonable donation for public welfare or charitable purposes” (220 ILCS 5/0-227); however, that prohibition by the Legislature merely provides that otherwise reasonable charitable donation(s) cannot be limited in amount by the Commission. Staff notes that the Commission’s directive to determine whether such a donation is reasonable is exactly that – a requirement for ComEd to show that its donations benefit its ratepaying public. Surely, the General Assembly could not have intended for Section 9-227 to benefit people other than Illinoisans, though Illinois ratepayers must pay for those benefits, and ComEd’s arguments to the contrary are unsound.

Next, ComEd claims the ALJPO violates the dormant Commerce Clause because “the preferential treatment that the Proposed Order affords to organizations in ComEd’s service territory (which are, of course, in state) when compared to those in other states such as Pennsylvania and Wisconsin impermissibly penalizes nonresident

organizations.” (ComEd BOE, p. 9) The Commission should also reject this argument. Staff notes at the outset that it is well-established that “an administrative agency lacks the authority to invalidate a statute on constitutional grounds or to *question its validity*.” (*Carpetland U.S.A. v. Ill. Dept. Employment Security*, 201 Ill. 2d 351, 397; 776 N.E.2d 166, 192 (2002)) As this Commission has noted previously, it has no authority to declare an Act of the Illinois General Assembly preempted or otherwise unconstitutional. (Order, Docket No. 01-0614, June 11, 2002, ¶42) In other words, while ComEd may certainly advance constitutional arguments, it cannot hope to succeed before the Commission with such arguments. Therefore, the Commission should disregard ComEd’s arguments on the Commerce Clause.

Finally, even if ComEd could advance such a constitutional argument, a bar to the recovery of out of service territory donations is not comparable to a legitimate dormant Commerce Clause challenge. ComEd’s inability to recover costs for donations to out of state charities is not a restraint on Commerce since it does not prohibit ComEd from making those donations. The Company is free to make millions of dollars of charitable donations if it elects to, which the ALJPO recognizes. (ALJPO, p. 43) The statute only limits the donations that ComEd can recover through rates from its customers; this does not harm its shareholders, nor does it penalize non resident organizations, it protects Illinois ratepayers.

4. Rate Case Expense – Instant Docket (for preparation of an Article IX Rate Case [V., C., 1., b.]

ComEd argues that the ALJPO’s disallowance of \$244,000 spent to prepare for a rate case that was never filed or litigated is “contrary to Section 9-229 of the Act and

ratemaking principles generally.” (ComEd BOE, p. 9) Section 9-229 states that “[t]he Commission shall specifically assess the justness and reasonableness of any amount expended by a public utility to compensate attorneys or technical experts to prepare and litigate a general rate case filing.” (220 ILCS 5/9-229) It is unreasonable for customers to pay for the preparation of a rate case which the Company never filed and the Company has failed to show the benefit to ratepayers for the Company preparing an anticipatory rate case. (Staff IB, p. 26; Staff RB, p. 12) ComEd states that, counter to the ALJPO’s claim, the language of the Act demonstrates that the General Assembly did not limit the provision to a single rate case. (ComEd BOE, pp. 9-10) However, taken to its logical extreme, ComEd’s argument seems to mean that the Commission would have to approve expenses incurred from rate cases at any point in its past: *i.e.*, ComEd could find an unpaid invoice it forgot to include for work done on a rate case in 2005, and include it as an expense in this case, assuming it was “just and reasonable.” Further, ComEd states that the ALJPO ignores the plain language of 9-229 and principles of statutory construction, but ComEd ignores the language itself. Section 9-229 requires the Commission to examine the amounts spent by attorneys to *prepare and litigate* a general rate case. As ComEd states, it spent \$244,000 *preparing* for an Article IX rate case. (ComEd BOE, p. 9) This rate case, as all parties agree, was never litigated. Therefore, again ComEd should not recover those costs.

As noted repeatedly in Staff’s and ComEd’s briefs, ComEd’s participation in the EIMA is entirely voluntary. (ComEd IB, pp. 40-41; Staff RB, p. 12) ComEd expended time and money preparing for an Article IX rate case it never filed, but then made a corporate decision that filing a rate case under the EIMA statute would be more

advantageous. When the EIMA passed, ComEd could have decided that since they had already begun preparation on a general rate case filing, it would go forward with that filing. And, as Staff points out in its briefs, and ComEd never disputes, there is significant overlap in the preparations for both an Article IX rate case and a formula rate case filing, and ratepayers should not be required to pay twice for the same services. (Staff IB, p. 26) It is unclear what ComEd did to prepare for the Article IX rate case that was not useable or useful for its EIMA filing, and ComEd has provided no information or clarification on the subject.

ComEd states that it is “well-settled that a utility’s conduct is not judged in the context of ensuing events, but rather it is evaluated in light of the circumstances as they existed at the time.” (ComEd BOE, p. 10, quoting *Bus. and Prof. People for Public Interest v. Ill. Commerce Comm’n*, 146 Ill. 2d 175, 209 (1991)) The comparison to that case is faulty, however, because the standard is whether the decision at the time was reasonable, which it was not. When judged by “the circumstances of the time,” ComEd’s decision to cease preparations on its Article IX in order to pursue a more lucrative and efficient tariff filing while forcing ratepayers to pay for those expenses was a frivolous and wasteful one, as stated in the ALJPO. (ALJPO, p. 47) Staff finds ComEd’s repeated statements that it did not know whether EIMA would be passed or whether it would ultimately elect to become a participating utility disingenuous.

Finally, Section 16-108.5 of the PUA states that:

Upon receipt of such notice, the Commission shall dismiss with prejudice any docket that had been initiated to investigate the electric delivery services tariffs filed pursuant to Section 9-201 of this Act, and such tariffs and the record related thereto *shall not be the subject of any further hearing*, investigation, or proceeding of any kind related to rates for electric delivery services. (220 ILCS 5/16-108.5(c)) (emphasis added)

Clearly, the General Assembly intended that if a utility elected to file under Section 16-108.5, any investigation under 9-201 should not be included in the record, such as rate case expense.

5. Rate Case Expense - Docket No. 11-0721 [V., C., 1., c.]

ComEd takes issue with the ALJPO's determination to exclude the majority of its rate case expenditures from its formula rate filing because it did not provide sufficient evidence. (ComEd BOE, p. 12) ComEd states that, on the contrary, it provided extensive detail supporting these expenses in discovery and testimony. (*Id.*) Staff agrees that while ComEd did provide testimony on the issue, and that testimony was in the record, the ALJPO correctly states that ComEd presented a "scant one-page spreadsheet that merely lists totals and various entities." (ALJPO, pp. 49-50)

The Commission is well aware that the burden of proof is on the Company to provide information such that the Commission can come to a decision about whether certain expenses are just and reasonable. Under the Act, the Commission's review of ComEd rates under Section 16-108.5 is to be "based on the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, the Commission applies in a hearing to review a filing for a general increase in rates under Article IX of this Act." (220 ILCS 6/16-108.5(c)(6)) Section 9-201(c) of the Act provides that when the "Commission enters upon a hearing concerning the propriety of any proposed rate or other charge, ...In such hearing, the burden of proof to establish the justness and reasonableness of the proposed rates or other charges ... shall be upon the utility." (220 ILCS 5/9-201(c))

As the ALJPO points out, a party seeking attorney's fees and expert witness fees must provide evidence that specifies: (1) the services performed; (2) by whom they were performed; (3) the time expended; and (4) the hourly rate charged. (*People ex. rel. Madigan v. Illinois Commerce Comm'n*, 2001 Ill. App. (1st) 101776, pp. 24-26) As the ALJ noted, the Company did not provide information into the record that satisfied these parameters, and therefore, the Commission cannot make a determination as to the justness and reasonableness of these expenses.

ComEd expresses its satisfaction with the quality of Staff's review and investigation by noting in its BOE that Staff witness Tolsdorf and other intervenors "properly investigated the 2011 rate case expenses" and "through extensive discovery, fully vetted [those expenses]." (ComEd BOE, pp. 15-16) However, whether Staff's review was thorough or what Mr. Tolsdorf "vetted" is not at issue. As the ALJPO notes, it does not make a determination about the reasonableness of the charges because it cannot – the ALJPO states that there is simply not enough information in the record to make such a determination as required by Section 9-229 or as required by Illinois law. (ALJPO, p. 50) Staff would note that ComEd filed a motion to supplement the record on the same day it filed its BOE. While Staff does not object to ComEd's motion to supplement the record and plans to file a response indicating such, whether the information is sufficient for the Commission to make its own assessment of the justness and reasonableness of the Company's rate case expense is for the Commission to decide.

6. Identification of cost incurred in compliance with Section 16-108.5 [VIII., C., 3., a]

ComEd Technical Exception No. 4

On page 21 of its BOE, ComEd describes its Technical Exception No. 4, in which the Company proposes technical changes to clarify certain terms and statutory references. Among the proposed changes, ComEd suggests Staff recommendation No. 3 on page 90 of the ALJPO be amended, changing the dollar description “million” to “thousands.” Staff does not agree with this suggested change. Staff notes that its testimony, initial brief, and reply brief on this issue all used the descriptor “million,” but inadvertently used a comma within the numerical value instead of the appropriate decimal point. However, it would be inappropriate to change the numerical format on the cited page, as this page is citing the recommendation of Staff set forth in the record. To address the issue Staff recommends changes be implemented to Finding paragraph (11) and the third Ordering paragraph, as discussed in more detail below.

Further, Staff does not find the remaining technical changes ComEd proposed to clarify certain terms and statutory references objectionable.

7. Contribution to energy low-income and support programs [VIII., C., 3., b.]

ComEd Technical Exception No. 8

On page 22 of its BOE, ComEd describes its Technical Exception No. 8, in which the Company proposes the elimination of Finding (12). While the Company’s proposed technical change is not entirely without merit, the elimination of paragraph (12) is unnecessary. The Company is correct that the requirements of subsection 16-108.5(b-

10) of the Act did not commence until January of 2012. However, the finding paragraph is also correct that the Company incurred \$0 in compliance with or in meeting the requirements of that subsection. As such, the removal of this paragraph is unnecessary.

If, however, the Commission determines Finding (12) should be removed as proposed by ComEd, concurrent language which appears in the fourth ordering paragraph on page 98 of the ALJPO should also be removed. Further, should these Findings and Orderings paragraphs be removed, the Commission should also insert new language into the Analysis and Conclusions section of this ALJPO part which states that the Commission agrees with the spirit of Staff's recommendation, and explains why the Commission did not adopt the Staff recommendation for purposes of the current proceeding.

Alternative Language (if ComEd Technical Exception 8 is adopted):

* * *

Further, the Commission agrees with the spirit of Staff's recommendation to include in the Findings and Orderings paragraphs of this proceeding a finding regarding the amount of cost incurred by ComEd in compliance with or in meeting the requirements of Section 16-108.5(b-10) of the Act. However, because those requirements did not commence until January of 2012, and this proceeding addresses 2011 operating costs, the recommended finding is not appropriate here and should be revisited in subsequent formula rate proceedings.

8. Findings and Ordering Paragraphs [X.]

Finding (11)

On page 30 of its BOE, ComEd describes its Technical Exception No. 7, in which the Company proposes several corrections to Finding (11). Staff agrees in part, and disagrees in part. As discussed in VIII.C.3.a above, ComEd suggests changing the descriptor used from “million” to “thousands.” Staff does not agree with this change. Rather, staff suggests that a more proper presentation would be achieved by changing to an all-numeric presentation outside of the stated table of plant additions. Within the table, Staff suggests leaving the descriptor “Millions” in place and, instead, using decimal points within the numerical values instead of commas.

Further, Staff agrees with the numerical corrections to Finding (11) as set forth in detail on Page 109 of the ComEd Exceptions document, with the understanding that the numerical values be stated in the format discussed herein.

Suggested Language:

* * *

- (11) the Commission, based on the record in this proceeding, finds that the approved revenue requirement includes ~~\$237,046,000~~~~269,474~~ million of projected 2012 plant additions to be incurred by the utility in compliance with, or in meeting, the infrastructure investment requirements of Section 16-108.5(b) of the Act. These are projected costs and will be reconciled to actual costs in the Company’s next formula rate filing. The detail of these projected plant additions in the categories as required by Section 16-108.5(b)(1) are as follows (in Millions):

Distribution infrastructure improvements	\$ 128.888 128,888
Training facility construction or upgrade projects	<u>2.551</u> 2,551
Wood pole inspection, treatment, and replacement	<u>11.110</u> 11,110
Reducing the susceptibility of storm-related damage	<u>23.447</u> 23,447
Total electric system upgrades, modernization projects, and training facilities	\$ <u>165.996</u>165,996
Additional smart meters	\$ <u>19.818</u> 1852,246
Distribution automation and associated cyber secure data communication network	<u>50.957</u> 50,957

Substation micro-processor relay upgrades	<u>.275275</u>
Total upgrade and modernization of transmission and distribution infrastructure and Smart Grid electric system upgrades	\$ <u>71.050103,478</u>
Total projected incremental 2012 plant additions	
In compliance with Section 16-108.5(b)(1) of the Act	<u>\$237.046269,474</u>

Finding (12)

On page 30 of its BOE, ComEd describes its Technical Exception No. 8, in which the Company proposes the elimination of Finding paragraph (12). As discussed in reference to Section VIII.C.3.b. of the ALJPO above, Staff believes it is unnecessary to eliminate Finding (12).

[Third] Ordering Paragraph

On page 31 of its BOE, ComEd describes its Technical Exception No. 10, in which the Company proposes changes to the [third] Ordering paragraph of the ALJPO. Staff disagrees with these changes, as set forth in detail on page 110 of the ComEd Exceptions document; however, Staff recommends further correction. Staff recommends that the dollar amount be amended from “\$269,474” million to \$237,046,000. This change is consistent with ComEd Technical Exception No. 7 and the corrections to Finding (11) discussed above, and consistent with the all-numeric format used within other Findings and Orderings paragraphs. Further, Staff recommends the Finding paragraph number referenced in the [third] Ordering paragraph on page 98 of the ALJPO be changed from (11) to (8), as it is Finding (8) which sets forth the revenue requirement approved in this Order.

Suggested Language:

* * *

IT IS FURTHER ORDERED that the approved revenue requirement set forth in Finding ~~(8)(11)~~ above includes ~~\$269,474~~237,046,000million of projected 2012 plant additions to be incurred by the utility in compliance with or in meeting the infrastructure investment requirements of Subsection 16-108.5(b) of the Act.

* * *

9. Terminology Regarding the 2013 Rate Year Revenue Requirement, Which is Based on 2011 Costs and 2012 Projected Plant Additions.

On pages 31-32 of its BOE, ComEd describes its Technical Exception No. 11, in which the Company proposes multiple technical changes to clarify the phrase “projected piece of the proceeding” and similar phrases. Via this Technical Exception, ComEd also proposes a clarification regarding non-AFUDC CWIP.

Staff does not oppose the proposed change to ALJPO page 5 regarding non-AFUDC CWIP (ComEd BOE, p. 32). Further, Staff does not oppose the changes to clarify the phrase “projected piece of the proceeding” and similar phrases as set forth in the ComEd Exceptions document, by using forms of the term “2013 Inception Revenue Requirement.” (See, for example, ComEd Exceptions, p. 4) Staff further concurs with ComEd that the use of the term “inception” revenue requirement is not apt, and should not be used in the same manner in future formula rate cases. However, Staff maintains its position that the average rate base used for purposes of determining the reconciliation revenue requirement should also be set forth in section III.A. of the Order. (Staff BOE, p. 4)

B. Staff's Response to AG/AARP

1. Charitable Contributions [V., C., 1., a.]

AG/AARP recommends ComEd reveal the source of its donations in order to ensure that “recipients of a utility’s largesse, as well as ratepayers who fund the contributions, understand the source of these funds.” (AG/AARP BOE, p. 11) This recommendation is based off of the recent ALJPO in Ameren Illinois Company’s (“AIC”) formula rate reconciliation docket, Docket No. 12-0293. Staff agrees with AG/AARP as well as the ALJ in Docket No. 12-0293 that this would provide important clarity and transparency to both the charity and ratepayers. Therefore, Staff recommends the following language provided in the AG/AARP BOE be added to the ALJPO after the third full paragraph at page 45:

Given the recent controversy surrounding charitable contributions, the Commission does seek to impose a requirement on the making of such donations in order to promote transparency to consumers. Section 9-227 of the Act permits recovery of reasonable donations made for the public welfare or for charitable scientific, religious, or educational purposes. Whether customers or the recipients of such donations are aware of their source, however, is not clear. To promote customer understanding of the ratemaking process, ComEd is to include with any and all future contributions the following statement: "ComEd's contribution is recovered in full from ratepayers as permitted by 220 ILCS 5/9-227." In addition to this statement appearing on a cover letter accompanying any donation, any signage recognizing ComEd's support must contain the statement in a clearly visible format. ComEd's failure to abide by this requirement following the entry of this Order may result in the disallowance of the relevant contribution.

(AG/AARP BOE, p. 12)¹

¹ AG/AARP’s proposed language states “Ameren” instead of ComEd; therefore, Staff modified that language accordingly.

C. Staff's Response to AG/AARP and CUB

1. Accumulated Deferred Income Taxes [III., C., 2.]

AG/AARP and CUB each reject the ALJPO conclusion which declines to make the ADIT adjustment recommended by those parties. (AG/AARP BOE, pp. 2-6; CUB BOE, pp. 3-7) Despite the argument from the Intervenors, Staff remains unconvinced of the propriety of their proposed ADIT adjustments given the record in this proceeding. As such, for purposes of this proceeding Staff supports the ALJPO conclusion on this issue.

III. CONCLUSION

WHEREFORE, for all of the following reasons, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations regarding the Company's tariffs and charges submitted pursuant to Section 16-108.5 of the Public Utilities Act.

Respectfully submitted,

JESSICA L. CARDONI
JOHN C. FEELEY
MEGAN C. MCNEILL
JOHN L. SAGONE
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jcardoni@icc.illinois.gov
jfeeley@icc.illinois.gov
mmcneill@icc.illinois.gov
jsagone@icc.illinois.gov

December 3, 2012

*Counsel for the Staff of the
Illinois Commerce Commission*